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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff/Counter-Defendant,

v.

INTUITIVE SURGICAL, INC.,

Defendant/Counter-Claimant.

Case No. 3:21-cv-03496-AMO

**PROPOSED SIMPLIFIED STATEMENT
OF THE CASE**

Date: November 25, 2024
Time: 11:00 a.m.
Courtroom: 10

The Honorable Araceli Martínez-Olguín

1 Pursuant to the Court's Schedule and Pretrial Order of June 11, 2024, Dkt. 235, Plaintiff
2 Surgical Instrument Service Company, Inc. and Defendant Intuitive Surgical, Inc., by and
3 through their undersigned counsel, met and conferred and could not reach an agreement on a
4 joint simplified statement of the case and so set forth below their respective proposals.

5 **A. SIS's Proposed Simplified Statement of the Case**

6 This is an antitrust case related to surgical robots, instruments that attach to and are used
7 with those robots, and whether the manufacturer of those robots and instruments has engaged in
8 anticompetitive conduct.

9 The plaintiff in this case is a company called Surgical Instrument Service Company (or
10 "SIS"), based in Glendale Heights, Illinois. The defendant is a company called Intuitive
11 Surgical, based in Sunnyvale, California.

12 Intuitive, founded in 1995, invented a minimally invasive surgical robot called "da Vinci"
13 which is used by surgeons around the world. The da Vinci allows a surgeon sitting at a console
14 to operate on patients by controlling surgical instruments called EndoWrists, also invented by
15 Intuitive. EndoWrists are attached to mechanical arms suspended above the patient, and inserted
16 into the patient's body through small incisions. As controlled by a surgeon, EndoWrists can
17 perform movements such as cutting, grasping, suturing, etc., allowing surgery to be done in a
18 minimally invasive manner. EndoWrists include fine wire cables that thread through a complex
19 pulley system, allowing the surgeon to move the surgical instruments easily inside the patient's
20 body to desired angles with great precision, mimicking and even exceeding the range of motion
21 of the human wrist. EndoWrist's instructions for use state they are to be replaced after a
22 specified number of uses, usually 10 uses. Intuitive markets and sells the da Vinci and
23 EndoWrist instruments throughout the United States.

24 For over 50 years, SIS has worked directly with hospitals to provide servicing of surgical
25 instruments ranging from stainless instruments to more complex systems such as surgical video
26 systems and flexible endoscopes. In the spring of 2019, SIS became aware of a company called
27 Rebotix that had a repair procedure for EndoWrist instruments. Rebotix's procedure involved
28 modifying EndoWrists for the purpose of permitting them to be reused for more than the number

1 of uses specified in Intuitive's instructions for use. Over the ensuing months, SIS worked with
2 Rebotix to understand the process. SIS began offering servicing of hospitals' S/Si EndoWrists to
3 its customer base in fall of 2019, including facilitating the inspection and repair of the
4 instruments and a reset of the use counter by Rebotix. SIS signed an agreement specific to
5 EndoWrist repairs with Vizient, the country's largest group purchasing organization (GPO)
6 representing thousands of hospitals and health care facilities.

7 SIS alleges that Intuitive's contracts with its customers prevented them from engaging
8 SIS to service the hospitals' S/Si EndoWrists, which included resetting the use counter to allow
9 the EndoWrist instruments to be reused for another 10 uses. SIS alleges that Intuitive enforced
10 those contractual restrictions by sending cease and desist letters to customers who used modified
11 EndoWrists. SIS alleges that Intuitive is able to force customers to accept these contractual
12 restrictions because it is a monopolist in what SIS contends is a market for minimally invasive
13 soft-tissue surgical robots. SIS claims that Intuitive uses its alleged monopoly power to
14 contractually condition the sale and servicing of da Vinci surgical robots on the customers'
15 agreement not to purchase EndoWrist instruments that have been modified by a third-party. SIS
16 claims that Intuitive's contracts have allowed Intuitive to monopolize an alleged market for the
17 repair and replacement of EndoWrist instruments. Additionally, SIS alleges that Intuitive
18 redesigned its X/Xi instruments to prevent third-party services from resetting the use counter on
19 its instruments. SIS disputes Intuitive's claims that the contractual provisions that SIS challenges
20 were put in place for legitimate procompetitive reasons.

21 SIS claims it was excluded from selling repaired EndoWrists because of limitations in
22 Intuitive's contracts with its customers. SIS seeks damages from Intuitive including what SIS's
23 lost profits would have been but for Intuitive's challenged conduct. SIS seeks damages from
24 2020 through 2026.

25 Intuitive denies these claims. Intuitive asserts that customers choose its da Vinci surgical
26 systems over other competing alternatives because Intuitive offers a superior combination of
27 product quality, service and price. Intuitive contends that its customers are highly sophisticated
28 buyers who understand the contract terms and costs associated with da Vinci systems, including

1 EndoWrists, understand that EndoWrists are designed for a limited number of uses, and
2 knowingly and expressly agree not to use EndoWrists that have been modified by any
3 unauthorized third party when they make the choice to buy or lease a da Vinci system. Intuitive
4 asserts that the contractual provisions that SIS challenges were put in place for legitimate and
5 procompetitive reasons, at a time when Intuitive had no significant sales or share of any market.
6 According to Intuitive, those reasons include protecting patient safety, ensuring product quality,
7 promoting innovation, and protecting Intuitive's reputation and brand. Intuitive contends that its
8 contracts have not harmed competition or excluded competitors. Intuitive maintains that its
9 contracts restrict only the use of unauthorized third-party products and services, and that SIS
10 chose not to seek authorization for its products and services. Intuitive disputes that it has the
11 power to force customers to accept its contractual terms. Intuitive contends that the da Vinci
12 surgical system competes against other products and methods of performing surgery, and that
13 customers can elect to use those alternative products and surgical methods if they do not wish to
14 accept Intuitive's products, prices or contract terms.

15 Intuitive also asserts counterclaims against SIS arising out of SIS's marketing,
16 advertising and related activities. First, Intuitive alleges that in its marketing materials and
17 communications, SIS made false and misleading statements and engaged in unfair competition.
18 Second, Intuitive alleges that SIS engaged in deceptive and fraudulent conduct with the intent to
19 confuse and deceive the public into using its service and purchasing modified EndoWrists.
20 Third, Intuitive alleges that SIS was aware of Intuitive's contractual relationships with its
21 customers that contain limitations concerning the modification or alteration of Intuitive
22 EndoWrists by unauthorized third-parties, and that SIS undertook intentional acts to disrupt
23 and/or induce Intuitive customers to breach those contractual relationships. SIS denies these
24 counterclaims.

1 **B. Intuitive’s Proposed Simplified Statement of the Case**

2 This is an antitrust case.

3 The plaintiff in this case is a company called Surgical Instrument Service Company (or
4 “SIS”), based in Glendale Heights, Illinois. The defendant is a company called Intuitive
5 Surgical, based in Sunnyvale, California.

6 Intuitive, founded in 1995, invented a device called “da Vinci” which is used by surgeons
7 around the world to perform surgery. The da Vinci allows a surgeon sitting at a console to
8 operate on patients by controlling surgical instruments called EndoWrists, also invented by
9 Intuitive. EndoWrists are attached to mechanical arms suspended above the patient, and inserted
10 into the patient’s body through small incisions. As controlled by a surgeon, EndoWrists can
11 perform movements such as cutting, grasping, suturing, etc., allowing surgery to be done in a
12 minimally invasive manner. EndoWrists include fine wire cables that thread through a complex
13 pulley system, allowing the surgeon to move the surgical instruments easily inside the patient’s
14 body to desired angles with great precision, mimicking and even exceeding the range of motion
15 of the human wrist. The Food and Drug Administration (FDA) granted clearance to Intuitive to
16 market and sell the da Vinci and EndoWrist instruments throughout the United States.
17 EndoWrists’ labeling, including the instructions for use, state they are to be replaced after a
18 specified number of uses.

19 For over 50 years, SIS has worked directly with hospitals to provide servicing of surgical
20 instruments ranging from stainless instruments to systems such as surgical video systems and
21 flexible endoscopes. In the spring of 2019, SIS became aware of a company called Rebotix that
22 had a procedure for modifying EndoWrists for the purpose of permitting them to be reused for
23 more than the number of uses specified by Intuitive. SIS began offering the Rebotix service to
24 its customer base in fall of 2019.

25 SIS alleges that Intuitive’s contracts with its customers prevented them from engaging
26 SIS to service the hospitals’ S/Si EndoWrists, which included resetting the use counter to allow
27 the EndoWrist instruments to be reused for another 10 uses. SIS alleges that Intuitive enforced
28 those contractual restrictions by sending cease and desist letters to customers who used modified

1 EndoWrists. SIS alleges that Intuitive is able to force customers to accept these contractual
2 restrictions because it is a monopolist in what SIS contends is a market for minimally invasive
3 soft-tissue surgical robots. SIS claims that Intuitive uses its alleged monopoly power to
4 contractually condition the sale and servicing of da Vinci surgical robots on the customers'
5 agreement not to purchase EndoWrist instruments that have been modified by a third-party. SIS
6 claims that Intuitive's contracts have allowed Intuitive to monopolize an alleged market for what
7 SIS describes as the repair and replacement of EndoWrist instruments. Additionally, SIS alleges
8 that Intuitive redesigned its X/Xi instruments to prevent third-party services from resetting the
9 use counter on its instruments. SIS disputes Intuitive's claims that the contractual provisions that
10 SIS challenges were put in place for legitimate procompetitive reasons.

11 SIS claims it was excluded from selling modified EndoWrists because of limitations in
12 Intuitive's contracts with its customers. SIS seeks damages from Intuitive, including what SIS
13 claims its lost profits would have been but for Intuitive's challenged conduct.

14 Intuitive denies these claims. Intuitive asserts that customers choose its da Vinci surgical
15 systems over other competing alternatives because Intuitive offers a superior combination of
16 product quality, service and price. Intuitive contends that its customers are highly sophisticated
17 buyers who understand the contract terms and costs associated with da Vinci systems, including
18 EndoWrists, understand that EndoWrists are designed for a limited number of uses, and
19 knowingly and expressly agree not to use EndoWrists that have been modified by any
20 unauthorized third party when they make the choice to buy or lease a da Vinci system. Intuitive
21 asserts that the contractual provisions that SIS challenges were put in place for legitimate and
22 procompetitive reasons, at a time when Intuitive had no significant sales or share of any market.
23 Those reasons include protecting patient safety, ensuring product quality, promoting innovation,
24 and protecting Intuitive's reputation and brand. Intuitive contends that its contracts have not
25 harmed competition or excluded competitors. Intuitive maintains that its contracts restrict only
26 the use of unauthorized third-party products and services, and that SIS chose not to seek
27 authorization for its products and services. Intuitive disputes that it has the power to force
28 customers to accept its contractual terms. Intuitive contends that the da Vinci surgical system

competes against other products and methods of performing surgery, and that customers can elect to use those alternative products and surgical methods if they do not wish to accept Intuitive's products, prices or contract terms.

Intuitive contends that SIS is not entitled to any damages, and that any "lost profits" that SIS claims are the result of factors unrelated to Intuitive's conduct, including SIS's own business choices.

Intuitive also asserts counterclaims against SIS arising out of SIS's marketing, advertising and related activities. *First*, Intuitive alleges that in its marketing materials and communications, SIS made false and misleading statements and engaged in unfair competition. *Second*, Intuitive alleges that SIS engaged in deceptive and fraudulent conduct with the intent to confuse and deceive the public into using its service and purchasing modified EndoWrists. *Third*, Intuitive alleges that SIS was aware of Intuitive's contractual relationships with its customers that contain limitations concerning the modification or alteration of Intuitive EndoWrists by unauthorized third-parties, and that SIS undertook intentional acts to disrupt and/or induce Intuitive customers to breach those contractual relationships. SIS denies these counterclaims.

Dated: October 28, 2024

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E-Filing Attestation

I, Kenneth A. Gallo, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above have concurred in this filing.

Dated: October 28, 2024

By: /s/ Kenneth A. Gallo
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